

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
NATIONAL DAY LABORER ORGANIZING :
NETWORK; CENTER FOR :
CONSTITUTIONAL RIGHTS; and :
IMMIGRATION JUSTICE CLINIC OF THE :
BENJAMIN N. CARDOZO SCHOOL OF LAW, :

Plaintiffs, :

- against - :

10 Civ. 3488 (SAS)
ECF Case

UNITED STATES IMMIGRATION AND :
CUSTOMS ENFORCEMENT AGENCY; :
UNITED STATES DEPARTMENT OF :
HOMELAND SECURITY; EXECUTIVE :
OFFICE FOR IMMIGRATION REVIEW; :
FEDERAL BUREAU OF INVESTIGATION; :
and OFFICE OF LEGAL COUNSEL, :

Defendants. :
----- X

DECLARATION OF PAUL P. COLBORN

I, Paul P. Colborn, declare as follows:

1. I am a Special Counsel in the Office of Legal Counsel (“OLC”) of the United States Department of Justice (the “Department”) and a career member of the Senior Executive Service. I joined OLC in 1986, and since 1987 I have had the responsibility, among other things, of supervising OLC’s responses to requests it receives under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. These statements are based on my personal knowledge, as well as on information provided to me by OLC attorneys and staff working under my direction, and by others with knowledge of the documents at issue in this case.

2. The principal function of OLC is to assist the Attorney General in his role as legal advisor to the President of the United States and to departments and agencies of the Executive Branch. OLC

provides advice and prepares opinions addressing a wide range of legal questions involving the operations of the Executive Branch.

3. On or about February 16, 2010, OLC received a 21-page FOIA request from Bridget Kessler, Clinical Teaching Fellow, Cardozo School of Law, Immigration Justice Clinic, and Sunita Patel, Staff Attorney, Center for Constitutional Rights. The FOIA request sought information about the “Secure Communities” program of the United States Immigration and Customs Enforcement (“ICE”), a component of the United States Department of Homeland Security. On April 16, 2010, I sent a letter to Ms. Kessler and Ms. Patel, acknowledging receipt of the FOIA request and notifying them that their request for expedited processing had been denied by the Director of Public Affairs of the Department of Justice. See 28 C.F.R. § 16.5(d)(2).

4. On or about May 7, 2010, OLC conducted a search for responsive documents by running search query terms through a database of all unclassified, final OLC advice. On or about November 8, 2010, OLC supplemented its May search by searching for documents generated in the period between May 7, 2010 and November 8, 2010. Attached hereto is a list of the search terms used in both of these two searches. No responsive documents were identified in the searches. Also in November, 2010, email searches were conducted of departed users email files using the terms “secure communities” and “interoperability.” No responsive documents were identified in these searches.

5. Also in November, 2010, specific queries were made to two long time career OLC attorneys who are generally aware of assignments of work at OLC. These attorneys indicated that they were unfamiliar with the “Secure Communities” program and had no recollection of OLC’s working on any immigration issues relating to this program.

6. Finally, in December 2010, a general query was sent to all OLC attorneys directing them to identify any hard copy or electronic documents (including emails) in their possession containing the term “secure communities,” as well as any documents relating to information-sharing agreements between federal and state and local governments. Two responsive documents were identified: 1) a draft declaration by David C. Palmatier, Unit Chief for the Law Enforcement Support Center at ICE, and 2) a draft declaration by Daniel H. Ragsdale, Deputy Assistant Secretary for Management at ICE, which were prepared in anticipation of litigation. Final versions of these declarations were filed on July 7, 2010 in the United States District Court for the District of Arizona, as exhibits 3 and 4 to a Motion for Preliminary Injunction (Docket # 27), in *United States of America v. State of Arizona*, Case No. 2:10-CV-01413-SRB. OLC referred these draft declarations to the Department of Homeland Security for processing, and it is my understanding that they have been produced to the Plaintiffs.

7. In August, 2011, Plaintiffs requested additional information regarding the specific file systems and databases that were searched at OLC. On September 23, 2011, Plaintiffs were informed by Defendants’ counsel as follows:

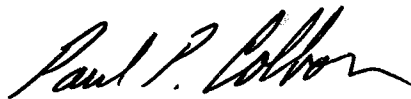
Defendant OLC completed its search for records responsive to plaintiffs’ original FOIA request and identified just two responsive records, both of which were referred to ICE. OLC’s substantive records are stored in two types of electronic systems, a shared central storage system for final work product and the computer accounts of individual attorneys—both of which were searched.

This statement is accurate.

8. I believe the searches conducted by OLC were reasonable, and were well designed to identify any responsive records, including any records relating to the ability of states or localities to opt-out or limit their participation in the Secure Communities Program. No such “opt-out” records were identified, and, except for the two aforementioned responsive records, no other responsive records were found in response to OLC’s searches.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: January 12, 2012

A handwritten signature in black ink, appearing to read "Paul P. Colborn". The signature is written in a cursive style with a prominent loop at the end.

PAUL P. COLBORN

Exhibit A

Search Terms Used for OLC Database Queries

Secure Communities
ICER
Detainer procedures
Overview documents
state and local agreements
Secure Community's inquiry and Response Procedures
287(g)
ICE Enforcement Procedures
Form I-247
Criminal Answer Required
CAR
Automated Immigration Alien Queries
IAQ
Immigrant Alien Responses
Form I-213
Form I-286
Form 862